

The Secretary,  
An Bord Pleanála,  
64 Marlborough Street,  
Dublin 1

Dear Sir/Madam,

**AN BORD PLEANÁLA**  
LDG- 014 376-19  
ABP- \_\_\_\_\_  
**21 MAR 2019**  
Fee: € 220 Type: cheque  
Time: 16-33 By: Hand

Date: 21<sup>st</sup> March 2019

**RE: REFERRAL OF DECLARATION UNDER SECTION 5 OF THE PLANNING AND DEVELOPMENT ACT 2000 AS TO WHETHER THE CURRENT USE OF PART OF THE SWISS COTTAGE AS A MOCK UP APARTMENT IS OR IS NOT EXEMPTED DEVELOPMENT**

**Dublin City Council Reg. Ref. 0439/18**

## 1.0 INTRODUCTION

- 1.1 On behalf of the applicant Cinamol Ltd., 4 Herbert Place, Dublin 2, we, John Spain Associates, 39 Fitzwilliam Place, Dublin 2, hereby submit to An Bord Pleanála a referral of a Section 5 Declaration made by Dublin City Council on 22nd February 2019, which granted an exemption for the erection of hoarding in association with site investigation works and which refused an exemption for the erection of a mock up, non-functional apartment unit internally within a public house function room at the Swiss Cottage, Swords Road, Santry, Dublin 9.
- 1.2 The application welcomes the decision of the Planning Authority with regard to the erection of the hoarding on the site, however this referral seeks a determination from An Bord Pleanála as to whether the erection of a mock up, non-functional apartment unit internally within an existing public house function rooms is or is not development and or is or is not exempted development in accordance with Section 3 of the Planning & Development Act 2000, as amended. We enclose the statutory fee of €220 for seeking a referral in this regard.
- 1.3 A copy of the Dublin City Council Section 5 Declaration of 22<sup>nd</sup> February 2019 is attached at Appendix 1. A copy of the application for the Section 5 Declaration and the further information response is attached at Appendix 2. A number of photographs of the site are attached as Appendix 3.
- 1.4 The subject temporary mock up is fully contained within an existing building, therefore does not materially affect the visual appearance of the external façade of the structure. In addition, there is no use associated with the subject mock. The

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Stephen Blair BA (Mod) MRUP MIPI MRTPI Mary Mac Mahon MSc TCP Pg Dip MSP Pg Dip Env Eng Dip Env Plg Law Dip Mgmt Dip EIA & SEA B Soc Sc MIPI

Associate Directors: Stephanie Byrne BA MRUP MIPI, Niall Byrne BSc(Hons) MSc MRTPI MIPI

John Spain Associates Ltd. trading as John Spain Associates. Directors: J. Spain, S. Spain.  
Registered in Ireland No. 396306. Registered Office: 39, Fitzwilliam Place, Dublin 2. VAT No. IE 6416306U

mock up is not in any active use therefore no material change of use has taken place.

- 1.5 It is respectfully submitted that the mock up apartment be further considered by the Planning Department in the context of Section 4(1)(h) of the Planning and Development Act 2000 as amended which states:

*“4(1)(h) development consisting of the carrying out of works for the maintenance, improvement or other alteration of any structure, being works which affect only the interior of the structure or which do not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or of neighbouring structures;”*

- 1.6 Having regard to the above, and notwithstanding the Declaration issued by Dublin City Council, it is respectfully requested that An Bord Pleanála issue a Declaration to the effect that the erection of the internal temporary mock up apartment units within the function room of the Swiss Cottage Public House is exempted development as there has been no material change of use and there is no impact on the external appearance of the building.

## **2.0 SITE LOCATION AND DESCRIPTION**

- 2.1 The subject site comprises of the Swiss Cottage Bar and Restaurant at the junction of Swords Road and Schoolhouse Lane, Santry, Dublin 9. The lands are bounded by Schoolhouse Lane to the north, Swords Road to the west, commercial and retail development due south and residential dwellings at Magenta Crescent to the east.
- 2.2 The lands are easily accessible via the R132 Swords Road which connects the subject lands both to other parts of north Dublin and Dublin Airport to the north and the city centre to the south. The lands are also located in close proximity to the M50 which provides access to the Port Tunnel.
- 2.3 The site is well served by bus services with Dublin Bus routes No.'s 16, 16c, 33, 41m 41a, 41b and 41c connecting the site to Dublin Airport, Ballbriggan and Swords to the north and the city centre and Ballinteer to the south. The site is also located along the proposed BusConnects Corridor.



**Figure 1: Subject site outlined in red; Source: Google Maps**

**AN BORD PLEANÁLA**

**21 MAR 2019**

LTR DATED

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FROM

- 2.4 The existing building on site comprises of a single storey building which has been subject to a number of alterations and extensions over the years. The site also contains an extensive hard standing area which is used as a car park/delivery facility.
- 2.5 The existing building on site is in use as a public house.
- 2.6 The subject site is not located within/ near any conservation areas, ACAs or European sites and there are no protected structures on site.

#### 4.0 REQUEST FOR A SECTION 5 DECLARATION

- 3.1 This Section 5 referral seeks a Declaration on the following:

*1. Whether the erection of a mock up, non-functional, apartment unit internally within an existing public house function room is or is not considered exempted development under Section 4(1)(h) of the Planning and Development Act 2000, as amended.*

- 3.2 The subject mock up apartment is a temporary structure used for the purposes of design development in advance of a planning application to be lodged under the Strategic Housing Development process as part of a Build-To-Rent Scheme.
- 3.3 The purpose of the mock up is to inform the design team of layouts, floor to ceiling heights, orientation and overall functionality of the apartment layout. The mock up will be utilised throughout design development and in order to gain a full understanding of the best layout of unit for such type of development.
- 3.4 The subject mock up is contained internally within the existing building on the site. The subject mock up apartment unit is not visible from the external elevations of the building therefore does not affect the external appearance of the existing structure. Photographs of the mock up apartment, the internal bar area and the external elevation of the public house are attached as Appendix 3. It is clear from the photographs that the mock up is not visible externally nor it is obstructing the current use of the building as a public house.
- 3.5 The mock up unit itself is clearly constructed as a temporary structure. The images of the frame of the mock up apartment clearly indicate this.
- 3.6 It is further noted that the mock up unit is not in any active use, therefore no material change of use has taken place on the site.
- 3.7 It is therefore submitted that the proposed development is exempt from planning permission under Section 4(1)(h) of the Planning and Development Act 2000.
- 3.8 The Planning and Development Act 2000, as amended, at Section 3(1) provides a definition of development for the purposes of the Act. Section 3(1) reads as follows
- "In this Act, "development" means, except where the context otherwise requires, the carrying out of any works on, in, over or under land or the making of any material change in the use of any structures or other land"*
- 3.9 Section 2 of the 2000 Act, as amended, describes, *inter alia*, that

AN BORD PLEANÁLA

21 MAR 2019

LTR DATED \_\_\_\_\_ FROM \_\_\_\_\_

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*“works’ includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal . . .”.* (Emphasis Added)

- 3.10 Section 4(1)(h) of the Planning and Development Act 2000, as amended, states that the following works shall be exempted development for the purposes of the Act:

*“(h) development consisting of the carrying out of works for the maintenance, improvement or **other alteration of any structure**, being works which affect only the interior of the structure or **which do not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or of neighbouring structures**”.* (Emphasis Added)

- 3.11 The mock up apartment which would constitute an alteration to the existing structure on the site does ‘not materially affect the external appearance of the structure’ and therefore can be considered to be exempted development within the meaning of Section 4(1)(h) of the Act. Furthermore, the mock up unit is not in any active use, therefore no material change of use has taken place on the site.

- 3.12 In Section 5 of this referral we summarise and respond to the assessment of the Section 5 undertaken by Dublin City Council, in particular setting out what we consider to be inaccuracies and/or errors within the assessment. We respectfully request the Board to have regard to our responses to the Council’s assessment when undertaking its own assessment.

#### 4.0 DUBLIN CITY COUNCIL’S SECTION 5 DECLARATION

##### The Council’s Declaration

- 4.1 The Declaration of Dublin City Council of 22<sup>nd</sup> February 2019 refused an exemption for the erection of a non-functional mock up apartment unit internally within the function room of a public house for the following reason:

*“The stated works constitute development by virtue of Section 3(1) of the Planning and Development Act 2000, as amended and do not constitute exempted development, in accordance with Section 4(1)(h) of the Planning and Development Act, 2000 as amended as it does not comprise an act of maintenance, improvement or other alteration of the structure”.*

##### The Planner’s Report

- 4.2 We attach a copy of the Dublin City Council Planner’s Report on the Section 5 application the subject of this referral and also the Council’s final Declaration at Appendix 1.
- 4.3 The Planner’s Report notes that the provision of the “mock up” apartment units is not considered to fall under the category of Section 4(i)(h) of the Planning and Development Act 2000, as amended as it is not comprise of an act of maintenance, improvement or other alteration of the structure. The Planner’s Report states:

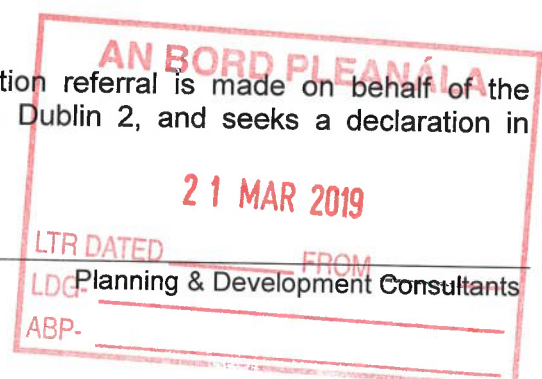
*“Section 4(1)(h) of the Act provides an exempted development provision for the carry out of works for the maintenance, improvement or other alteration of any structure , being works which affect the interior of the structure or which does not material affect the external appearance of the structure so as to render the*

*appearance inconsistent with the character of the structure or of neighbouring structures. It is considered that the construction of a mock – up apartment does not fall within the parameters of Section 4(1)(h), as it does not comprise an act of maintenance, improvement or other alteration of the structure, in accordance with the Act”.*

- 4.4 The Planning and Development Act 2000, as amended, at Section 3(1) provides a definition of development for the purposes of the Act. Section 3(1) reads as follows:
- “In this Act, “development” means, except where the context otherwise requires, the carrying out of any works on, in, over or under land or the making of any material change in the use of any structures or other land”.*
- 4.5 Section 2 of the 2000 Act, as amended, describes, inter alia, that:
- “works’ includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal . . .”.*
- 4.6 Section 4(1)(h) of the Planning and Development Act 2000, as amended, states that the following works shall be exempted development for the purposes of the Act:
- “(h) development consisting of the carrying out of works for the maintenance, improvement or **other alteration of any structure**, being works **which affect only the interior of the structure or which do not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or of neighbouring structures”.*** (Emphasis Added)
- 4.7 The subject mock up apartment is a temporary structure used for the purposes of design development in advance of a planning application to be lodged under the Strategic Housing Development process as part of a Build-To-Rent Scheme.
- 4.8 The mock up falls under an alteration to any structure under Section 4(1)(h) of the Planning and Development Act 2000, as amended.
- 4.9 The purpose of the mock up is to inform the design team of layouts, floor to ceiling heights, orientation and overall functionality of the apartment layout. The mock up will be utilised throughout design development and in order to gain a full understanding of the best layout of unit for such type of development.
- 4.10 The subject mock up is contained internally within the existing building on the site. The subject mock up apartment unit is not visible from the external elevations of the building therefore does not affect the external appearance of the existing structure.
- 4.11 It is further noted that the mock up unit is not in any active use, therefore no material change of use has taken place on the site.
- 4.12 It is therefore submitted that the proposed development is exempt from planning permission under Section 4(1)(h) of the Planning and Development Act 2000

## 5.0 SUMMARY AND CONCLUSIONS

- 5.1 This application for a Section 5 Declaration referral is made on behalf of the applicant, Cinamol Ltd., 4 Herbert Place, Dublin 2, and seeks a declaration in respect to the following:



*Whether the erection of a mock up, non-functional, apartment unit internally within an existing public house function room is or is not considered exempted development under Section 4(1)(h) of the Planning and Development Act 2000, as amended.*

- 5.2 *Section "4(1)(h) development consisting of the carrying out of works for the maintenance, improvement or other alteration of any structure, being works which affect only the interior of the structure or which do not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or of neighbouring structures;"*
- 5.3 The subject mock up is contained internally within the existing building on the site, thus the works did not add to the overall floorspace of the existing structure. The subject mock up apartment unit is not visible from the external elevations of the building therefore does not affect the external appearance of the existing structure. The mock up unit is also not in any active use, therefore no material change of use has taken place on the site.
- 5.4 As set out in this cover letter, it is respectfully submitted that the subject mock-up apartment unit is considered to constitute exempted development under Section 4(1)(h) of the Planning and Development Act 2000, as amended.
- 5.5 Having regard to the above, An Bord Pleanála is respectfully invited to determine that the erection of a non-function mock up apartment internally within the existing public house falls within the definition of exempted development under Section 4(1)(h).

Yours faithfully,



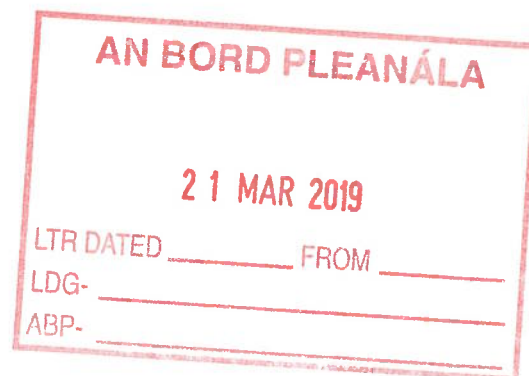
**John Spain Associates**

Enclosures:

**Appendix 1:** Copy of the Dublin City Council Section 5 Declaration of 22<sup>nd</sup> February

**Appendix 2:** Copy of the Section 5 Declaration application of 30<sup>th</sup> October 2018.

**Appendix 3:** Images of the Mock up internally and externally

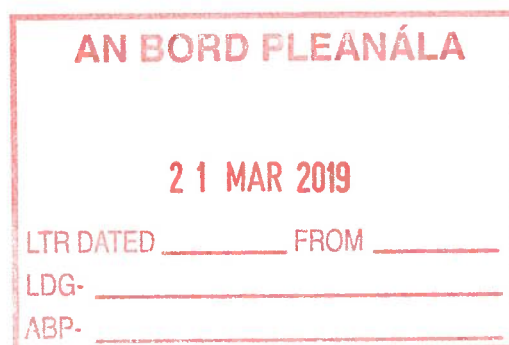


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**APPENDICES**

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**APPENDIX 1 - COPY OF THE DUBLIN CITY COUNCIL SECTION 5 DECLARATION**

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**AN BORD PLEANÁLA**

**21 MAR 2019**

LTR DATED \_\_\_\_\_ FROM \_\_\_\_\_

LDG- \_\_\_\_\_

ABP- \_\_\_\_\_





Date 22-Feb-2019

John Spain Associates  
39, Fitzwilliam Place  
Dublin 2



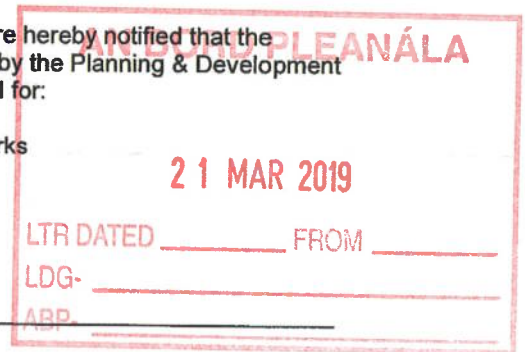
Application No. 0439/18  
Registration Date 04-Feb-2019  
Decision Date 22-Feb-2019  
Decision Order No P2580  
Location Swiss Cottages, Bar & Restaurant, Swords Road, Santry, Dublin 9  
Proposal EXPP: 1) Construction of a mock apartment unit within the area of an existing structure which does not materially affect the external appearance of the structure.  
2) Erection of hoarding to the side of a site investigate works.  
Applicant Cinamol Ltd

Dear Sir/Madam

With reference to the above proposal submitted by you, you are hereby notified that the Planning Authority in pursuance of the powers conferred on it by the Planning & Development Acts 2000 (as amended) has decided to **GRANT EXEMPTION** for:

The erection of hoarding associated with site investigation works

subject to the conditions specified in Schedule 1,



**SCHEDULE 1 CONDITIONS AND REASONS**

The stated works constitute development by virtue of Section 3(1) of the Planning and Development Act, 2000, as amended, and constitute exempted development, in accordance with Schedule 2, Part 1, Class 16 of the Planning and Development Regulations 2001, as amended, where associated with drilling or excavation for the purpose of surveying land or examining the depth and nature of the subsoil, other than drilling or excavation for the purposes of minerals prospecting.

and to **REFUSE EXEMPTION** for :

The erection of a mock-up, non-functional apartment unit internally within an existing public house function room

for the reasons set out in Schedule 2

NOT1split\_Section5

Planning Registry & Decisions, Planning Department  
Civic Offices, Wood Quay, Dublin 8

Clárann / Cinntí Pleanála  
An Roinn Pleanála agus Forbartha, Clárann / Cinntí  
Oifigí na Cathrach, An Ché Adhmaid, Baile Átha Cliath 8  
T: (01) 672 2149 / F: (01) 670 7861

Date 22-Feb-2019

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**SCHEDULE 2 REASONS**

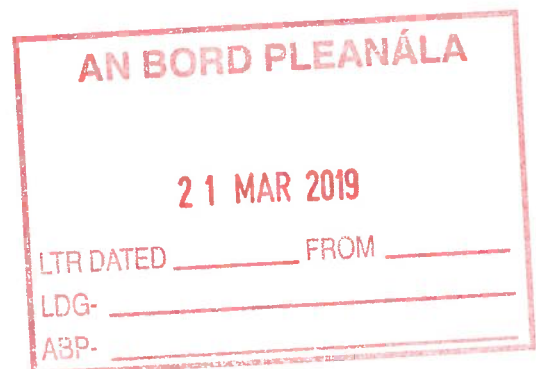
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The stated works constitute development by virtue of Section 3(1) of the Planning and Development Act, 2000, as amended and do not constitute exempted development, in accordance with Section 4(1)(h) of the Planning and Development Act 2000, as amended, as it does not comprise an act of maintenance, improvement or other alteration of the structure.

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Signed on behalf of Dublin City Council

OLIVER O'LEARY  
for Assistant Chief Executive



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**APPENDIX 2 - COPY OF THE SECTION 5 DECLARATION APPLICATION**

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**AN BORD PLEANÁLA**

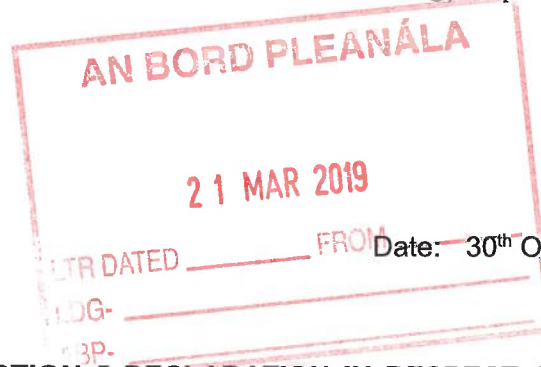
**21 MAR 2019**

LTR DATED \_\_\_\_\_ FROM \_\_\_\_\_

LDG- \_\_\_\_\_

ABP- \_\_\_\_\_

Dublin City Council,  
Planning Department,  
Block 4,  
Civic Offices,  
Wood Quay,  
Dublin 8



Dear Sir / Madam,

**RE: APPLICATION FOR A SECTION 5 DECLARATION IN RESPECT OF WORKS AT SWISS COTTAGE, SANTRY, DUBLIN 9**

**1.0 INTRODUCTION**

1.1 On behalf of the applicant Cinamol Ltd., 4 Herbert Place, Dublin 2, we hereby request a Section 5 Declaration from Dublin City Council in respect of the following proposed works:

- (a) *Whether the erection of a mock up, non-functional, apartment unit internally within an existing public house function room is or is not considered exempted development under Section 4(1)(h) of the Planning and Development Act 2000, as amended.*
- (b) *Whether the erection of hoarding associated with site investigation works is or is not considered exempted development.*

1.2 We enclose the following information with this Section 5 application:

- Statutory fee of €80;
- Completed Section 5 Declaration Application Form;
- 2 no. copies of the following drawings prepared by John Fleming Architects;
  - Site Location Map;
  - Existing Site Plan;
  - Existing Sections and Elevations.

1.3 The subject mock up is contained internally within the existing building on the site. The subject mock up apartment unit is not visible from the external elevations of the building therefore does not affect the external appearance of the existing structure. The mock up unit is also not in any active use, therefore no material change of use has taken place on the site. As such it is considered that the subject mock up unit is exempted development under Section 4(1)(h) of the Planning and Development Act 2000 as amended.

1.4 It is also considered that the erection of the hoarding surrounding the site in association with exempted site investigation works under Class 45, Part 1, Schedule 2 of the Planning and Development Regulations is considered to be

Managing Director: John P. Spain BBS MRUP MRICS ASCS MRTPI MIPi

Executive Directors: Paul Turley BA MRUP Dip Environmental & Planning Law MIPi RORY KUNZ BA (MOD) MScERM MAT&CP Dip EIA Mgmt. MIPi

John Spain Associates Ltd. trading as John Spain Associates. Directors: J. Spain, S. Spain.  
Registered in Ireland No. 396306. Registered Office: 39, Fitzwilliam Place, Dublin 2. VAT No. IE 6416306U

exempted development under Class 16, Part 1, Schedule 2 of the Planning and Development Regulations.

- 1.5 This cover letter will describe each of the proposed alterations and seek to demonstrate that they constitute exempted development.

**2.0 SITE LOCATION AND DESCRIPTION**

- 2.1 The subject site comprises of the Swiss Cottage Bar and Restaurant at the junction of Swords Road and Schoolhouse Lane, Santry, Dublin 9. The lands are bounded by Schoolhouse Lane to the north, Swords Road to the west, commercial and retail development due south and residential dwellings at Magenta Crescent to the east.
- 2.2 The lands are easily accessible via the R132 Swords Road which connects the subject lands both to other parts of north Dublin and Dublin Airport to the north and the city centre to the south. The lands are also located in close proximity to the M50 which provides access to the Port Tunnel.
- 2.3 The site is well served by bus services with Dublin Bus routes No.'s 16, 16c, 33, 41m 41a, 41b and 41c connecting the site to Dublin Airport, Ballbriggan and Swords to the north and the city centre and Ballinteer to the south. The site is also located along the proposed BusConnects Corridor.



**Figure 1: Subject site outlined in red; Source: Google Maps**

- 2.4 The existing building on site comprises of a single storey building which has been subject to a number of alterations and extensions over the years. The site also contains an extensive hard standing area which is used as a car park/delivery facility.
- 2.5 The existing building on site is in use as a public house.
- 2.6 The subject site is not located within/ near any conservation areas, ACAs or European sites and there are no protected structures on site.

### 3.0 LEGISLATIVE FRAMEWORK

3.1 The Planning and Development Act 2000, as amended, at Section 3(1) provides a definition of development for the purposes of the Act. Section 3(1) reads as follows:

*"In this Act, "development" means, except where the context otherwise requires, the carrying out of any works on, in, over or under land or the making of any material change in the use of any structures or other land".*

3.2 Section 2 of the 2000 Act, as amended, describes, *inter alia*, that:

*"works' includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal . . .". (Emphasis Added)*

3.3 Section 4(1)(h) of the Planning and Development Act 2000, as amended, states that the following works shall be exempted development for the purposes of the Act:

*"(h) development consisting of the carrying out of works for the maintenance, improvement or other alteration of any structure, being works which affect only the interior of the structure or which do not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or of neighbouring structures". (Emphasis Added)*

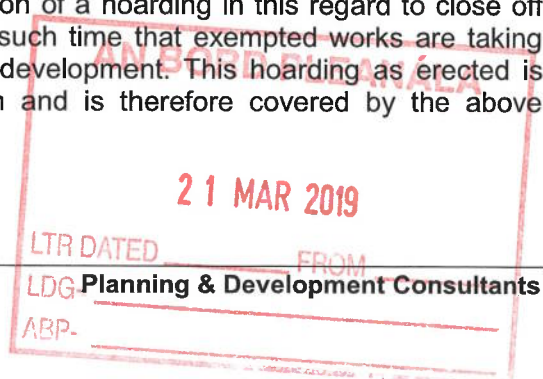
3.4 It will be demonstrated in Section 4.0 below that the mock up apartment which would constitute an alteration to the existing structure on the site does 'not materially affect the external appearance of the structure' and therefore can be considered to be exempted development within the meaning of Section 4(1)(h) of the Act. Furthermore, the mock up unit is not in any active use, therefore no material change of use has taken place on the site.

3.5 In addition, the Planning and Development Regulations set out a number of classes which are considered exempted development under schedule 2 of the regulations. Class 45, Part 1, Schedule 2 of the Planning and Development Regulations which states:

3.6 *"Any drilling or excavation for the purpose of surveying land or examining the depth and nature of the subsoil, other than drilling or excavation for the purposes of minerals prospecting".*

3.7 Class 16, Part 1, Schedule 2 of the Planning and Development Regulations, it is considered that *"the erection, construction or placing on land on, in, over, or under which, or on land adjoining which, development consisting of works (other than mining) is being or is about to be, carried out pursuant to a permission under the Act or as exempted development, of structures, works, plant or machinery needed temporarily in connection with that development during the period in which it is being carried out".*

3.8 As such, it is considered that the erection of a hoarding in this regard to close off the site for safety of the public during such time that exempted works are taking place on site is considered exempted development. This hoarding as erected is part of the site investigation operation and is therefore covered by the above exemption.



**4.0 SUBJECT WORKS AND EXEMPTED DEVELOPMENT**

4.1 The first aspect of this Section 5 application is as follows:

(a) *Whether the erection of a mock up, non-functional, apartment unit internally within an existing public house function room is or is not considered exempted development under Section 4(1)(h) of the Planning and Development Act 2000, as amended.*

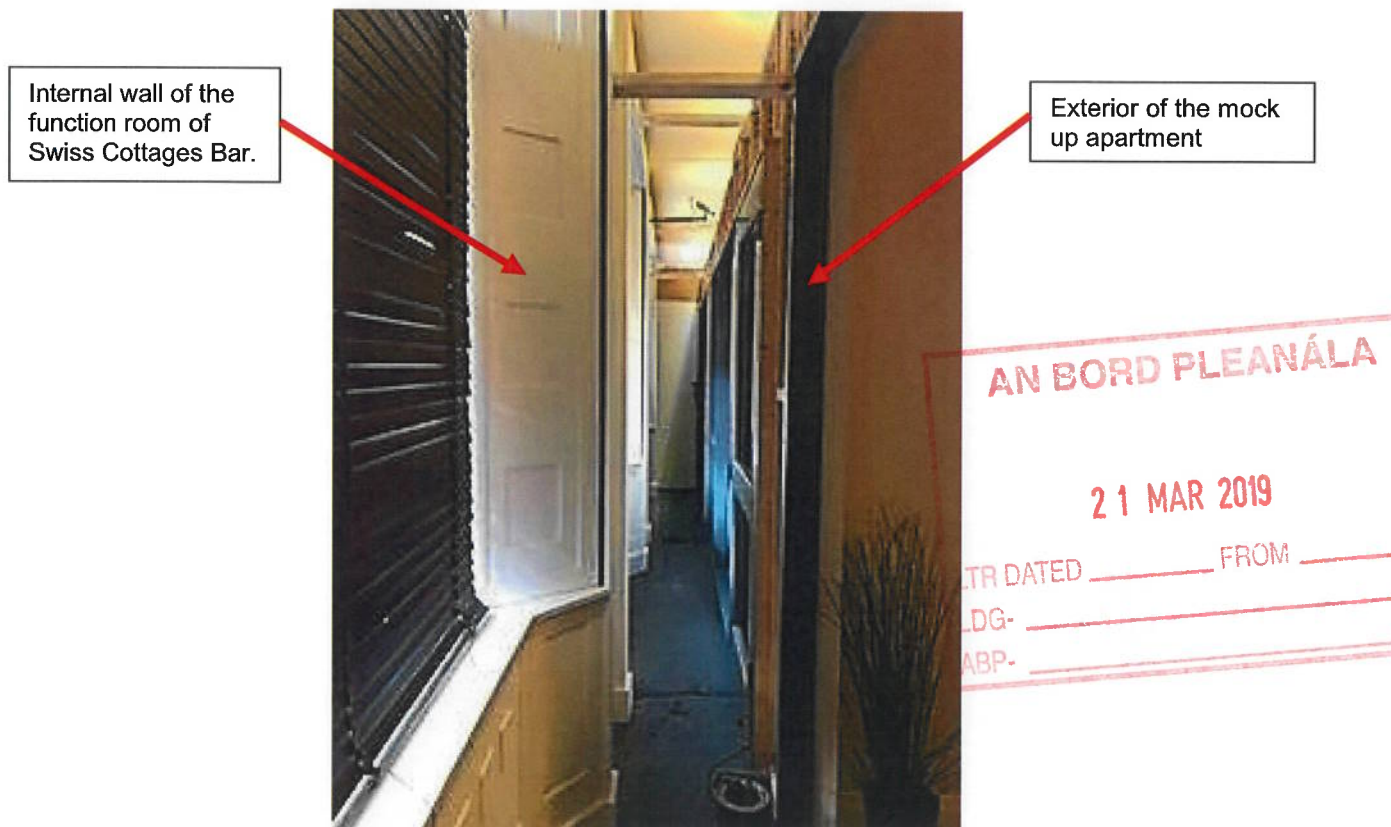
4.2 The subject mock up apartment is a temporary structure used for the purposes of design development in advance of a planning application to be lodged under the Strategic Housing Development process as part of a Build-To-Rent Scheme.

4.3 The purpose of the mock up is to inform the design team of layouts, floor to ceiling heights, orientation and overall functionality of the apartment layout. The mock up will be utilised throughout design development and in order to gain a full understanding of the best layout of unit for such type of development.

4.4 The subject mock up is contained internally within the existing building on the site. The subject mock up apartment unit is not visible from the external elevations of the building therefore does not affect the external appearance of the existing structure.

4.5 It is further noted that the mock up unit is not in any active use, therefore no material change of use has taken place on the site.

4.6 It is therefore submitted that the proposed development is exempt from planning permission under Section 4(1)(h) of the Planning and Development Act 2000.



**Figure 2: Picture of the mock up apartment within the interior of the Swiss Cottages Bar and Restaurant**

4.7 The second aspect of the Section 5 application is as follows:

(b) *Whether the erection of hoarding associated with site investigation works is or is not considered exempted development.*

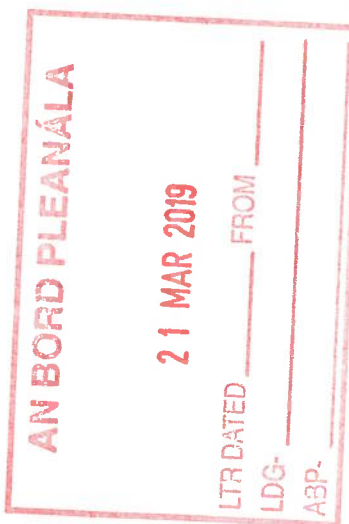
4.8 It is noted that the definition of "fence" as set out in the Planning and Development Act includes hoarding or similar structure.



Figure 3: Hoarding from Swords Road entrance to Swiss Cottages Bar



Figure 4: Subject hoarding from Schoolhouse Lane





- 4.9 The subject hoarding was erected through the carpark of Swiss Cottages Bar from the Swords Road entrance and along Schoolhouse Lane, within the boundary walls of the subject site. The hoarding is not adjoining a public path.
- 4.10 The timber hoarding is c. 2m in height. The hoarding is of good quality and has been well maintained, therefore the hoarding does not pose a threat to members of the public passing by, nor does it act as an eyesore to the surrounding residents.
- 4.11 The purpose of the hoarding was to close off the site to carry out site investigation works in accordance with Class 45 and Class 16, Part 1, Schedule 2 of the Planning and Development Regulations.
- 4.12 The site investigation works are on-going, therefore the hoarding is proposed to remain in place until such works conclude. The erection of the boundary is in the interest of the safety of the public and the people undertaking the site investigation works.
- 4.13 Class 16, Part 1, Schedule 2 of the Planning and Development Regulations, it is considered that:

*“the erection, construction or placing on land on, in, over, or under which, or on land adjoining which, development consisting of works (other than mining) is being or is about to be, carried out pursuant to a permission under the Act or as exempted development, of structures, works, plant or machinery needed temporarily in connection with that development during the period in which it is being carried out”.*

- 4.14 As such, it is considered that the erection of the subject hoarding in this regard to close off the site for safety of the public during such time that exempted works are taking place on site is considered exempted development. This hoarding as erected is part of the site investigation operation and is therefore covered by the above exemption.

## 5.0 SUMMARY AND CONCLUSIONS

- 5.1 This application for a Section 5 Declaration is made on behalf of the applicant, Cinamol Ltd., 4 Herbert Place, Dublin 2, and seeks a declaration in respect to the following:

- (a) *Whether the erection of a mock up, non-functional, apartment unit internally within an existing public house function room is or is not considered exempted development under Section 4(1)(h) of the Planning and Development Act 2000, as amended.*
- (b) *Whether the erection of hoarding associated with site investigation works is or is not considered exempted development.*

- 5.2 *“4(1)(h) development consisting of the carrying out of works for the maintenance, improvement or other alteration of any structure, being works which affect only the interior of the structure or which do not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or of neighbouring structures;”*

- 5.3 The subject mock up is contained internally within the existing building on the site, thus the works did not add to the overall floorspace of the existing structure. The subject mock up apartment unit is not visible from the external elevations of the

building therefore does not affect the external appearance of the existing structure. The mock up unit is also not in any active use, therefore no material change of use has taken place on the site.

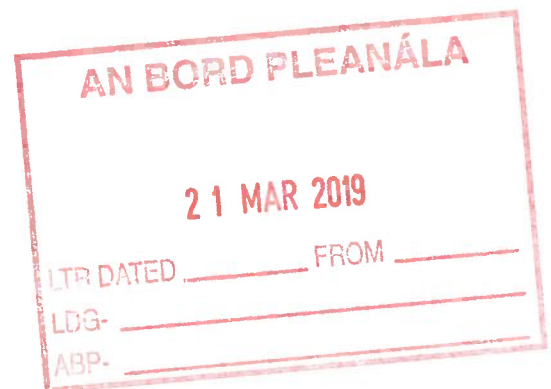
- 5.4 As set out in this cover letter, it is respectfully submitted that the subject mock-up apartment unit is considered to constitute exempted development under Section 4(1)(h) of the Planning and Development Act 2000, as amended.
- 5.5 Furthermore, it is considered that the erection of a hoarding in this regard to close off the site for safety of the public during such time that exempted works are taking place on site is considered exempted development. This hoarding as erected is part of the site investigation operation and is therefore covered by the above exemption.
- 5.6 Please do not hesitate to contact should you require any further information in relation to the application for a Section 5 Declaration.

Yours faithfully,



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John Spain Associates

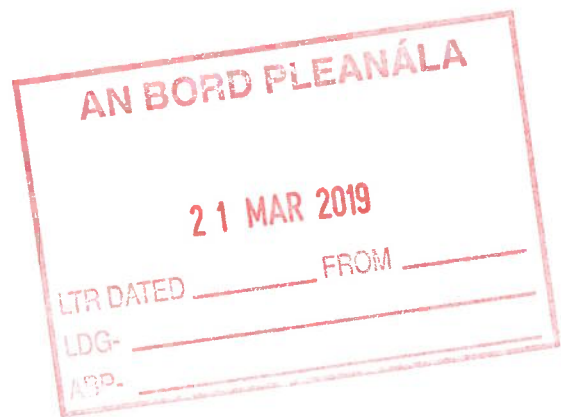


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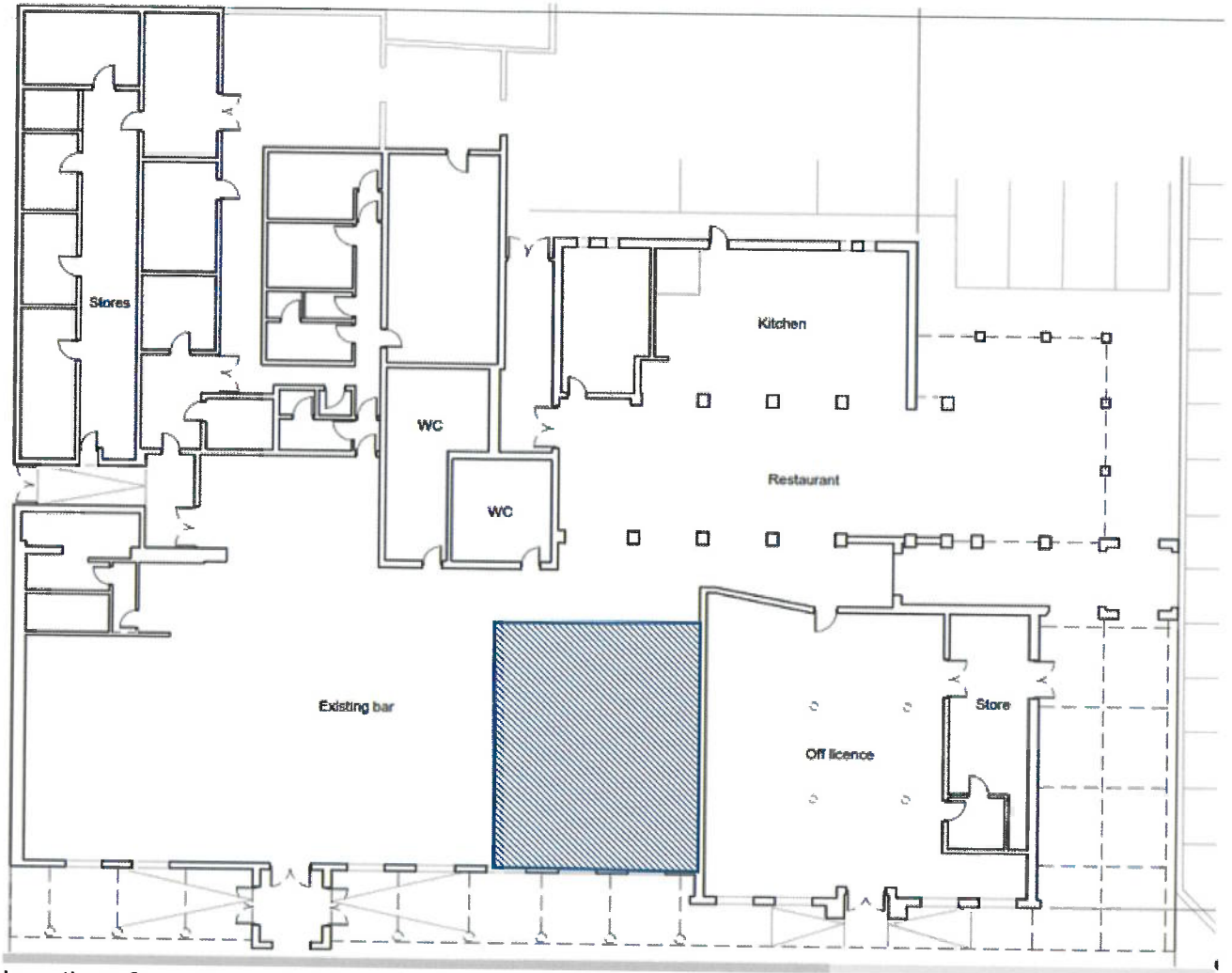
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**APPENDIX 3 – PHOTOGRAPHS OF THE MOCK UP APARTMENT UNIT**

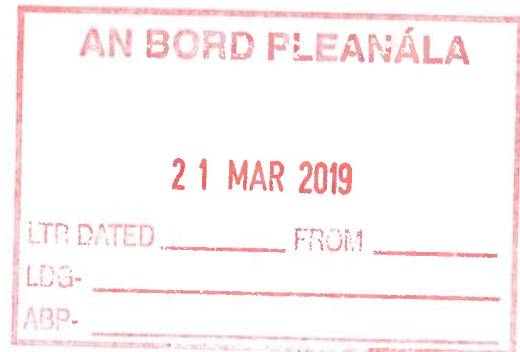
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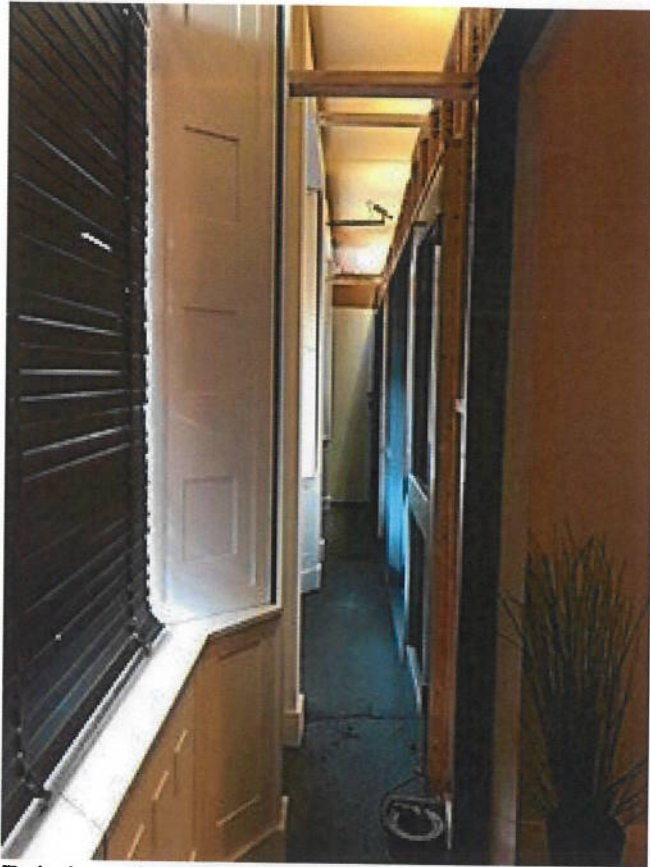


**APPENDIX 3 – PHOTOGRAPHS OF THE MOCK UP APARTMENT UNIT**



Location of mock up apartment within the existing bar area





Relationship between the mock up apartment unit and the west façade elevation



External west façade of the building with the mock up not visible





West elevation of the building



Internal layout of the bar area with the mock up unit concealed

